IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.1014 of 2001

Reserved on 30.4.2007

Date of decision 12.6.2007

Narain Dutt and others Petitioners

Vs.

The State of H.P. and others Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioners: Mr. Baldev Singh, Advocate.

For the Respondents : Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan Dy.Advocate General, for respondent No.1.

Mr.Neel Kamal Sood, Advocate, for respondents No.2 and 3.

Rajiv Sharma,J.

The brief facts necessary for the adjudication of this petition are that the petitioners after getting their land demarcated and marking of trees in accordance with law through revenue agencies, the respondent No.3 issued felling order. The petitioners had also entered into an agreement with respondent No.3 Corporation. The similarly situate persons had approached this Court by way of CWP No.605 of 1987 which was decided on 3.11.1997. The order dated 3.11.1997 is reproduced below:

> "In view of this, the present writ petition has become infructuous and the petitioners are permitted to withdraw it. They may challenge this Notification by filing another writ petition.

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

However, if they approach the respondents for deciding the dispute in respect of deductions within a period of four weeks, it will be decided by the Secretary (Forest) within a period of six weeks. The writ petition is dismissed as infructuous…"

In sequel to order dated 3.11.1997 one Shri Mansukh Ram had submitted an application to the Managing Director on 11.11.1997 and application dated 10.12.1997 was addressed to the Financial Commissioner-cum-Secretary (Forests). The decision was taken by the Additional Chief Secretary to the Government of Himachal Pradesh on 24.3.1998 to the following effect:

"The meeting with the petitioners and also representatives of the Forest Corporation and Pr. Chief Conservator of Forests was held on 25th May,1996 and after hearing both the parties, I had come to the conclusion that the price offered to the petitioners should be rational and the same should also be suitable to the State Forest Corporation and the following method which may be appropriate and realistic was suggested but the petitioners did not agree to the proposal:-

a) The profit chargeable by the H.P. State Forest Corporation @ 15% may be made applicable on the net sale instead of gross sale.

b) If there is a delay after the sale proceeds of the timber, the H.P. State Forest Corporation is liable to pay the same rate of interest which the respondent Forest Corporation is charging from the Special Power of Attorneys.

The above proposal however was not accepted by the then petitioners. In view of the matter and the circumstances of the case, I again reiterate the earlier decision taken as at paras (a) and (b) to be more justifiable, in addition to the concessions already offered, the calculations of interest is waived off on establishment

charges and delayed period of working of lot(s) and therefore order as follows:-

a) The profit chargeable by the H.P. State Forest Corporation @ 15% is to be made applicable on net sale proceeds instead of gross sale proceeds.

b) If there is delay in payments after the sale proceeds of the timber, the H.P. State Forest Corporation is liable to pay the same rate of interest which the respondent Forest Corporation is charging from the special power of Attorneys.

c) The interest is to be calculated after excluding the amount of establishment charges. Reasonable relief should also be allowed for delay in the working of the lot(s).

This decision will not be a precedent for other similarly situated cases."

The stand of the respondent No.1 State by way of reply is that the Annexure P-13 cannot be applied to the petitioners and similarly situate persons as they had not made any representation prior to 16.8.1999.

Mr.Baldev Singh, learned counsel appearing for the petitioners has submitted that it is the duty cast upon the respondent No.1 State to fix the prices under Section 7 of the Himachal Pradesh Forest Produce (Regulation and Trade) Act, 1982. Mr.M.S.Chandel, learned Advocate General had stated that the petitioners were to be paid prices in accordance with economic system as per past practice. Mr.Chandel along with Mr.Neel Kamal Sood had then submitted that the decision dated 24.3.1998 as conveyed vide Annexure P-13 dated 25.7.1998 cannot be made applicable to the petitioners, more particularly in view of the

observation contained at the bottom of the decision that the same will not be treated as precedent for other similarly situated cases.

I have considered the rival submissions of the learned counsel for the parties.

It is imperative for the respondent No.1 State to pay the price in accordance with the mechanism provided under Section 7 of the Himachal Pradesh Forest Produce (Regulation and Trade) Act, 1982. The Committee is required to be constituted as per proviso to Section 7 of the Act. The Committee had to deliberate and thereafter the price is to be notified. The respondents have been following the system known as “economic system”. This system is not visualized in the Scheme of the Himachal Pradesh Forest Produce (Regulation and Trade) Act, 1982. Admittedly no committee was constituted for the relevant period. A decision has been taken on 24.3.1998. If a decision has been taken with regard to the similarly situated persons the same should have been made applicable to the petitioners as well. The petitioners and the persons in whose favour the decision dated 24.3.1998 had been taken form a homogeneous class. The homogeneous class of farmers could not be divided merely by stating towards the end of the decision that it will not be treated as a precedent. The plea taken by the State that since the petitioners have not made any representation before 1998 they will not be entitled to the benefit of decision dated 24.3.1998 is untenable. The respondents cannot be permitted to treat equal as un-equals.

The stand taken by the respondents No.2 and 3 that the petitioners had signed the agreement for working out the prices is also untenable. What has been stated in the agreement is that the Corporation will purchase the trees as per the terms and conditions and procedure prescribed in the Himachal Pradesh Forest Produce (Regulation and Trade) Act, 1982 and rules framed there under.

The upshot of the above discussion is that the State had not constituted any Committee for working out the prices for the period in question. Similarly situated persons had been paid the price of their forest produce as per the decision taken on 24.3.1998 and the petitioners being similarly situate persons are also entitled to be treated at par with them. In other words, the petitioners could not be treated differently from those persons in whose favour the decision has been taken by the Additional Chief Secretary to the Government of Himachal Pradesh. Accordingly this writ petition is allowed. The respondents are directed to work out the modalities for the payment to be made to the petitioners on the basis of decision dated 24.3.1998 as conveyed on 25.7.1998 within a period of four weeks from today.

No costs.

June 12,2007(g) **(Rajiv Sharma), J.**